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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 JEFFREY A. DICKSTEIN,

No. C-12-4676 MMC

12 Plaintiff,

**ORDER GRANTING DEFENDANTS'  
MOTIONS TO DISMISS; VACATING  
HEARING**

13 v.

14 STATE BAR OF CALIFORNIA, et al.,

15 Defendants.  
16 \_\_\_\_\_/

17 Before the Court are two motions to dismiss plaintiff Jeffrey A. Dickstein's  
18 ("Dickstein") complaint: (1) the State Bar Defendants' motion,<sup>1</sup> filed November 13, 2012;  
19 and (2) the Non-State Bar Defendants' motion,<sup>2</sup> filed November 20, 2012. Dickstein has  
20 filed one opposition brief responding to both motions, which opposition he supplemented on  
21 December 8, 2012; the State Bar Defendants and the Non-State Bar Defendants have  
22 separately replied. Having read and considered the papers filed in support of and in  
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24 <sup>1</sup>The State Bar Defendants are the State Bar of California ("State Bar"), the State  
25 Bar Court of the State Bar of California ("Bar Court"), the Board of Trustees of the State Bar  
26 of California, the Office of the Chief Trial Counsel of the State Bar of California, Joann M.  
27 Remke, Judith A. Epstein, Catherine D. Purcell, Lucy Armendariz, Patrice E. McElroy,  
28 Richard A. Honn, Richard A. Platel, Donald F. Miles, Jayne Kim, Joseph R. Carlucci,  
Charles A. Murray, and William Todd.

<sup>2</sup>The Non-State Bar Defendants are the California Supreme Court, Chief Justice  
Tani Gorre Cantil-Sakauye, Justice Joyce L. Kennard, Justice Marvin R. Baxter, Justice  
Kathryn M. Werdegar, Justice Ming W. Chin, Justice Carol A. Corrigan, and Justice  
Goodwin Liu.

1 opposition to the motions, the Court deems the matters suitable for decision on the parties'  
 2 respective written submissions, VACATES the hearing scheduled for January 18, 2013,  
 3 and rules as follows.

4 In his complaint, Dickstein alleges that defendants, which consist of the State Bar,  
 5 the Bar Court, officials and employees of each of said entities, as well as the California  
 6 Supreme Court and the justices thereof, have violated and will violate Dickstein's federal  
 7 rights. Specifically, Dickstein alleges, defendants (1) have violated his First Amendment  
 8 rights by requiring him to pay dues to the State Bar and instituting disciplinary proceedings  
 9 against him even though he has resigned from the State Bar (see Compl. ¶¶ 21, 29-30, 91,  
 10 98), (2) have violated his equal protection and due process rights by taking the position that  
 11 the State Bar has statutory and jurisdictional authority to determine whether he has  
 12 engaged in "other misconduct warranting discipline" (see Compl. ¶¶ 84-85, 103, 109), and,  
 13 (3) if they subject him to a Rule of Procedure of the State Bar allowing a judge to enter an  
 14 attorney's default if he fails to appear at a noticed disciplinary hearing, will violate his equal  
 15 protection and due process rights because, Dickstein asserts, he lack funds to travel to the  
 16 hearing or to hire an attorney to represent him (see Compl. ¶¶ 86-88, 113-14, 118).<sup>3</sup>

17 In their respective motions, the State Bar Defendants and the Non-State Bar  
 18 Defendants argue the complaint is subject to dismissal on abstention grounds.

19 The Ninth Circuit has held that a federal district court ordinarily "must abstain from  
 20 granting injunctive or declaratory relief that would interfere with pending state judicial  
 21 proceedings," including "disciplinary proceedings" pending before the State Bar. See Hirsh  
 22 v. Justices of the Supreme Court of the State of California, 67 F.3d 708, 712 (9th Cir.  
 23 1995); see also Rosenthal v. Carr, 614 F.2d 1219, 1220 (9th Cir. 1980) (finding "abstention  
 24 doctrine generally precludes federal court interference with pending state attorney  
 25 disciplinary proceedings"; affirming, on abstention grounds, dismissal of complaint seeking  
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27 <sup>3</sup>Subsequent to the filing of the complaint, the Bar Court entered Dickstein's default  
 28 (see State Bar Defs.' Req. for Judicial Notice Ex. H) and thereafter denied Dickstein's  
 motion to set aside the default (see Pl.s' Ex. F).

1 injunction precluding State Bar from proceeding with disciplinary proceeding against  
2 plaintiff until State Bar appointed counsel for plaintiff).

3 In particular, “[a]bsent extraordinary circumstances, abstention in favor of state  
4 judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate  
5 important state interests, and (3) provide the plaintiff an adequate opportunity to litigate  
6 federal claims.” See Hirsh, 67 F.3d at 712 (internal quotation and citation omitted).

7 Here, each of the three enumerated prerequisites for abstention is satisfied. First,  
8 plaintiff concedes the State Bar’s disciplinary proceeding is ongoing, and, indeed, in  
9 support of his opposition, has offered copies of various orders issued in the course of the  
10 disciplinary proceeding. Second, “California’s attorney disciplinary proceedings implicate  
11 important state interests.” See id. Third, an attorney subject to disciplinary proceedings  
12 before the Bar Court may raise “federal constitutional claims” upon “judicial review of the  
13 Bar Court’s decision,” which opportunity “satisfies the third requirement” even though the  
14 California Supreme Court’s review is “wholly discretionary.” See id.

15 Dickstein argues that abstention nonetheless is improper in this instance because,  
16 Dickstein asserts, extraordinary circumstances exist.

17 In support thereof, Dickstein first reiterates his claims that his federal rights have  
18 been and will be violated by the Bar Court. Dickstein’s argument is unavailing. As  
19 explained in Hirsh, Dickstein may raise his federal claims by seeking from the California  
20 Supreme Court judicial review of any adverse decision by the Bar Court. See id.

21 Dickstein next argues that if he files a petition for review, and if the California  
22 Supreme Court exercises its discretion to grant such review, they will rule on his petition in  
23 an unconstitutional manner. Given that no petition has been filed, let alone ruled upon,  
24 Dickstein’s argument is based, in essence, on no more than his speculation that the  
25 California Supreme Court will not follow the United States Constitution. Such speculation  
26 is, as a matter of law, insufficient to identify an “extraordinary circumstance” warranting this  
27 Court’s intervention into the ongoing disciplinary proceeding. In particular, as the United  
28 States Supreme Court has explained, the principles underlying abstention are based on “a

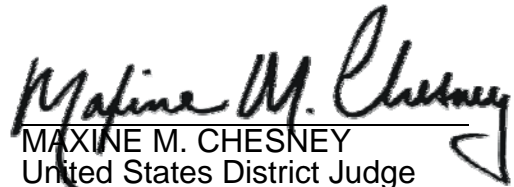
1 proper respect for state functions,” see Middlesex County Ethics Committee v. Garden  
2 State Bar Ass’n, 457 U.S. 423, 431 (1982) (internal quotation and citation omitted), and that  
3 such respect “precludes any presumption that the state courts will not safeguard federal  
4 constitutional rights,” see id.; see also Confederated Tribes v. Superior Court, 945 F.2d  
5 1138, 1141 (9th Cir. 1991) (noting “[t]he supremacy clause of the Constitution requires  
6 state judges to discern and apply federal law where it is controlling”; rejecting argument  
7 based on presumption state judges “will not do so unless a federal court tells them to”).

8 In sum, each prerequisite for abstention having been satisfied and Dickstein having  
9 failed to identify any cognizable extraordinary circumstances, the Court will decline to  
10 exercise jurisdiction over Dickstein’s claims.

11 Accordingly, defendants’ motions to dismiss are hereby GRANTED, and the  
12 complaint is hereby DISMISSED without leave to amend and without prejudice to  
13 Dickstein’s raising his federal claims before the California Supreme Court in a petition for  
14 review of any adverse decision by the Bar Court.

15 **IT IS SO ORDERED.**

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17 Dated: December 14, 2012

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19 MAXINE M. CHESNEY  
20 United States District Judge  
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